IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Peggy Diane Mathews,	)	
	)	
Plaintiff,	)	Civil Action File No.:
	)	
v.	)	
	)	
Credit Control Services, Inc.,	)	
	)	**COMPLAINT**
Defendants.	)	**WITH JURY TRIAL DEMAND**

PRELIMINARY STATEMENT

This action for damages is based on Defendants' false reporting on Plaintiff's credit file and/or consumer reports, failures to follow reasonable procedures to assure maximum possible accuracy of the information concerning Plaintiff, and failures to conduct reasonable reinvestigations with respect to such information.

PARTIES

1. Plaintiff, Peggy Diane Mathews, is a natural person who resides in Gilmer County, Georgia.

2. Plaintiff is an individual obligated on a debt and is therefore a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

3. Defendant, Credit Control Services, Inc. (hereinafter "Credit Control"), is a corporation formed under the laws of the State of Massachusetts and registered to do business in the State of Georgia. Credit Control may be served with process via its registered agent, C T Corporation System, at 1201 Peachtree Street NE, Suite 1240, Atlanta, Georgia 30361-3514.

4. Credit Control uses interstate commerce and/or mail in its business. The principal purpose of Credit Control's business is the collection of consumer debts. Credit Control also regularly collects, or attempts to collect, directly, or indirectly, debts owed or due, or asserted to be owed or due, to a third party. Credit Control is therefore a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over Plaintiff's Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq*., claims likewise arises under 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendants pursuant to O.C.G.A. § 9-10-91(1) because, *inter alia*, Defendants frequently and routinely conduct business in the State of Georgia, including the conduct complained of herein.

7. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because a substantial part of the events or omissions giving rise to the claims occurred in this district. Pursuant to LR 3.1B(3), NDGa, venue is proper in the Atlanta Division because one or more Defendants maintain agents for service of process within the Atlanta Division.

Factual Allegations Derived from Plaintiff's Bankruptcy Case

8. On May 23, 2015, Plaintiff filed a Chapter 13 Voluntary Bankruptcy Petition in the United States Bankruptcy Court for the Northern District of Georgia, Gainesville Division, Case Number 15-21057 (the "Bankruptcy Case").

9. In Schedule F of her Bankruptcy Petition, Plaintiff listed Credit Control as having an unsecured claim in the amount of $477.00 (the "Credit Control Debt").

10. On May 23, 2015, Plaintiff filed her Chapter 13 Plan in accordance with 11 U.S.C. § 1322, reforming any pre-existing contract being collected upon by

Credit Control and setting forth her proposed treatment of the Debt collected by Credit Control, including detailed payment terms.

11. Plaintiff's Plan provided, in part, that Credit Control's allowed claim would be paid through the Chapter 13 trustee and that no payments would be forthcoming from any other source.

12. Following confirmation, Credit Control was bound by the terms of the Plan, including the provisions controlling payment of its claim, in accordance with 11 U.S.C. § 1327(a).

13. A confirmed plan constitutes a new contract between the debtor and creditor, and thereafter a creditor's rights are defined by the confirmed plan. Consequently, a pre-petition claim provided for in a confirmed plan is no longer a pre-petition claim. The claim is a right to payment arising from the confirmed plan. *Padilla v. Wells Fargo Home Mortg., Inc. (In re Padilla)*, 379 B.R. 643, 649, 2007 Bankr. LEXIS 2655, *1 (Bankr. S.D. Tex. 2007).

14. On August 26, 2015, Plaintiff's Plan was confirmed and became *res judicata* as to Plaintiff and Credit Control.

15. Credit Control was served with the Confirmation Order on August 28, 2015, by the Bankruptcy Noticing Center.

16. The Bankruptcy Case is currently pending and Plaintiff continues to substantially perform under the terms of her Confirmed Plan.

17.

Factual Allegations Pertinent to All Defendants

18. The reporting of consumer credit information, by credit reporting agencies ("CRAs") and data furnishers, is the foundation of credit risk scoring and impacts the financial lives of consumers in innumerable ways, including the availability and cost of credit, housing opportunities, leasing prospects, insurance availability and cost, utility service, and even employment. Between two and three million consumer reports are issued by credit bureaus each day. See, *http://www.cdiaonline.org/about.cfm*.

19. The Consumer Data Industry Association ("CDIA") is an international trade association, representing over 140 members involved in credit reporting, mortgage reporting, check verification, tenant and employment screening, collection services, and fraud verification services, and the CDIA is active in both federal and

state legislative affairs, public relations, education, and the promulgation of industry standards.

20. Because consumer credit reporting information is such sensitive data that has far reaching implications for most, if not all, consumers, the CDIA works together with CRAs to develop, maintain and enhance industry-standard reporting formats and guidelines.

21. To further assist CRAs and data furnishers with performing their due diligence and reporting accurate, complete, and timely data, in satisfaction of the FCRA's legal requirements, the CDIA offers extensive training, education, and support to CRAs and data furnishers.

22. The CDIA's extensive training and support offerings include FCRA certification programs for both CRAs and data furnishers, to assist each in maintaining compliance with FCRA regulations.

23. Because standardized methods are of paramount importance to the accurate, complete and timely reporting of consumer credit data, the CDIA can and will revoke FCRA certification for failure to adhere to the standards set by the CDIA.

24. In cooperation with the major CRAs, CDIA publishes the Metro 2 ("Metro 2") reporting standards to assist furnishers with their compliance requirements under the FCRA. CDIA's reporting products are used in more than nine billion transactions each year.

See, *http://www.cdiaonline.org/about/index.cfm?unItemNumber=515*

25. The Metro 2 Format Task Force is comprised of representatives from Equifax, Experian, Innovis, and TransUnion, and is supported by the CDIA. Metro 2 Format Task Force's mission is to provide a standardized method for the reporting of accurate, complete and timely data, and has developed the Metro 2 standards. *Id.*

26. The Metro 2 standards provide uniformity in the reporting and interpretation of credit data, including credit risk scoring.

27. It is axiomatic that in the world of consumer credit information reporting, as long as a consumer credit account is open, every month some piece of information regarding that account/consumer is going to change. For example, interest continues to accrue, payments are made, etc.

28. 15 U.S.C. § 1681s-2(a)(2) requires furnishers of information to regularly correct and update the information they previously provided to consumer reporting agencies, to make sure the information is complete and accurate.

29. Accordingly, and in furtherance of its mission, the Metro 2 Format Task Force has developed an industry standard for reporting consumer accounts that "will ensure the integrity and consistency of the credit information being reported." As part of that industry standard the Metro 2 Format Task Force has declared, "All accounts must be reported on a monthly basis." (Emphasis added.) *Id.*

30. Because consumer credit information changes monthly, failure to update that information on a monthly basis, yet still publishing reports containing the previously reported information without updates, means that the information being reported is almost certainly incomplete and inaccurate.

31. The Fair Isaac Corporation credit risk scoring system, commonly referred to as FICO, is the leading credit scoring system, and utilizes data reported by credit reporting agencies and furnishers which are, ostensibly, in compliance with Metro 2 standards.

32. Defendant has actual knowledge that entities that perform credit risk scoring, and other functions utilizing the data reported by Defendants, assumes Defendants' compliance with Metro 2 standards.

33. At all times relevant hereto, Defendant adopted and implemented the Metro 2 format for their reporting of consumer data.

34. The failure on the part of a furnisher to adhere to the accepted Metro 2 standards increases the probability of a reported item being false or materially misleading and adversely affecting the consumer.

35. The failure on the part of a furnisher to adhere to the accepted Metro 2 standards can itself support a finding of willful violation as described by 15 U.S.C. § 1681n when that failure results in a report that is false, incomplete, and misleading.

Factual Allegations Derived from Reporting to and by Experian

36. On or about November 3, 2016, Plaintiff obtained a copy of her credit file as reported Experian Information Services, LLC, one of the largest credit reporting agencies in the country.

37. That report contained erroneous information as provided by Credit Control, and as published and reported by Experian.

38. Specifically, the report shows the status of Credit Control Debt as in collections, with a past due balance of $173.00.

39. The relevant portion of the Credit Control tradeline appeared in the November 3, 2016, Experian report as follows:

CREDIT CONTROL SERVICES INC 725 CANTON ST NORWOOD MA 02062 **No phone number available** **Partial account number** 50543424 **Address identification number** 0067099379 **Original creditor** PROGRESSIVE	**Date opened** Jan 2014 **First reported** Oct 2016 **Date of status** Oct 2016	**Type** Collection **Terms** 1 Months **Monthly payment** Not reported	**Credit limit or original amount** $173 **High balance** Not reported	**Recent balance** $173 as of Oct 2016	**Responsibility** Individual **Status** Collection account. $173 past due as of Oct 2016. This account is scheduled to continue on record until Dec 2019.

(Remaining portion of tradeline omitted.)

40. Because the Credit Control Debt is included in Plaintiff's Bankruptcy Case, and the payment terms permanently modified pursuant to 11 U.S.C. § 1327, the information described above was both false and misleading.

41. The specific reporting described above falsely states the status of the account and was in derogation of accepted industry standards for reporting the account as set forth by the CDIA and Metro 2 and as adopted by the Defendants. See e.g., 2015 CDIA Credit Reporting Resource Guide ("2015 Metro 2").

42. The report made by Defendant to Experian was in furtherance of Defendant's efforts to collect a consumer debt.

Damages

43. Defendants had actual notice that the information it was reporting regarding Plaintiff and the Debt it was collecting was false, deceptive, and misleading.

44. Accordingly, Defendants' conduct was willful.

45. As a result of Defendants' willful actions and omissions, Plaintiff is eligible for statutory damages.

46. Additionally, as a result of Defendants' actions and omissions, Plaintiff has suffered actual damages, including out-of-pocket expenses in challenging Defendants' wrongful representations regarding the Debts, as well as frustration, worry, and aggravation resulting from such false and misleading representations.

47. Moreover, as a result of the actions of Defendant, Plaintiff's actual damages also include the illegitimate suppression of her Fair Isaac Corporation ("FICO") credit score and other credit rating model scores.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. §§ 1692e, 1692e(2), 1692e(8), and 1692e(10)

48. Plaintiff incorporates by reference paragraphs 1 through 47 as though fully stated herein.

49. Credit Control's provision of false and/or misleading information in connection with its attempts to collect the alleged debt violated multiple provisions of the FDCPA, including without limitation 15 U.S.C. §§ 1692e, 1692e(2), 1692e(8), 1692e(10), and 1692f.

50. As a result of Credit Control's violations of the FDCPA, Plaintiff has suffered actual damages. Plaintiff is therefore entitled to recover actual damages under 15 U.S.C. § 1692k.

51. Under 15 U.S.C. § 1692k, Plaintiff is also entitled to recover from Credit Control $1,000 in statutory damages and reasonable attorney's fees and costs.

COUNT II

VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT O.C.G.A. § 10-1-393(a)

52. Plaintiff incorporates by reference paragraphs 1 through 47 and 49 through as though fully stated herein.

53. O.C.G.A. § 10-1-393(a) broadly prohibits unfair business practices.

54. It was unfair and deceptive for Credit Control to falsely report the status of Plaintiff's account to third-parties in an effort to collect a debt that was scheduled in bankruptcy.

55. As pled above, Plaintiff was harmed by Credit Control's unfair conduct.

56. Upon information and belief, Credit Control regularly reports information to credit reporting agencies in an effort to collect outstanding debts.

57. Upon information and belief, reports to credit reporting agencies are Credit Control's *modus operandi* for debt collection and are done on a wide scale.

58. Credit Control's conduct amounts to an unfair business practice.

59. Credit Control's conduct has implications for the consuming public in general and potential negative impact on the consumer marketplace.

60. Credit Control does not maintain a place of business in Georgia and has no assets in Georgia, thus relieving Plaintiff of the Notice and Demand requirement of O.C.G.A. § 10-1-399(b).

61. As a result of Credit Control's violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover general damages pursuant to O.C.G.A. § 10-1-399(a).

62. As a result of Credit Control's willful and wanton violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover exemplary damages pursuant to O.C.G.A. § 10-1-399(a).

63. Credit Control's actions were intentional, rendering it liable for treble damages pursuant to O.C.G.A. § 10-1-399(c).

64. Plaintiff is entitled to recover reasonable attorney's fees and expenses pursuant to O.C.G.A. § 10-1-399(d).

65. Furthermore, because Credit Control has acted in bad faith, been stubbornly litigious, and/or caused Plaintiff unnecessary trouble and expense, Plaintiff is also entitled to an award of reasonable attorney's fees and expenses pursuant to O.C.G.A. § 13-6-11.

TRIAL BY JURY

66. Plaintiff is entitled to and hereby requests a trial by jury.

WHEREFORE, Plaintiff prays that judgment be entered in her favor and against Defendants, jointly and severally, for:

a.) Plaintiff's actual damages;

b.) Punitive and/or statutory damages pursuant to 15 U.S.C. § 1692 et seq.;

c.) General, exemplary, and treble damages pursuant to O.C.G.A. §§ 10-1-399(a) & (c);

d.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k and O.C.G.A. §§ 10-1-399(d) and/or 13-6-11;

e.) Such other and further relief as may be just and proper.

Respectfully submitted this 28th day of January, 2017.

BERRY & ASSOCIATES

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